IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 29445 of 2006(E)

PETITIONER:

M. MOHAMMED RAPHY,
WELFARE OFFICER, COCHIN PORT TRUST,
COCHIN PORT TRUST, COCHIN-9.

BY ADV. SRI.GEORGE THOMAS (MEVADA)

RESPONDENTS:

1. THE CHAIRMAN,
COCHIN PORT TRUST, W.ISLAND, COCHIN-9.

2. COCHIN PORT TRUST,
W.ISLAND, COCHIN-9, REPRESENTED BY ITS SECRETARY.

3. SRI.P.S.MUHAMMED NAZEER,
SHED WRITER, TRAFFIC DEPARTMENT,
COCHIN PORT TRUST, COCHIN-9.

4. SMT. K.P.DHEERATMAJA,
COCHIN PORT TRUST, SECRETARY'S DEPARTMENT,
COCHIN-9 NOW PROMOTED AS WELFARE INSPECTOR ON AD-HOC BASIS.

BY ADV. SRI.K.JAJU BABU for R3
SRI.S.P.ARAVINDAKSHAN PILLAY for R4
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR, SC, CPT
SRI.ANIL.D.NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/06/2007 ALONG WITH WPC NO. 6927 OF 2007, THE COURT ON 14/06/2007 DELIVERED THE FOLLOWING:

WPC.NO.29445/2006 E

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF RECRUITMENT RULE FOR WELFARE OFFICER.**

EXT.P2: **COPY OF RECRUITMENT RULE FOR WELFARE INSPECTOR.**

EXT.P3: **COPY OF JUDGMENT IN WP.20420/2004 DTD. 14/03/2006.**

EXT.P4: **COPY OF JUDGMENT IN W.A.585/99 DTD. 03/09/2003.**

EXT.P5; **COPY OF THE LETTER NO.SECY/5/2006/S DTD. 7/11/2006.**

EXT.P6: **COPY OF LETTER DTD. 15/01/04.**

EXT.P7: **COPY OF THE NOTIFICATION DTD. 07/04/2004.**

EXT.P8: **COPY OF THE NOTICE DTD. 23RDTO 25TH JANUARY, 2004.**

EXT.P9: **COPY OF THE LETTER AND ATTACHED INFORMATION ISSUED BY UNIVERSITY OF KERALA DTD. 18/08/06.**

EXT.P10: **COPY OF THE LETTER ISSUED BY THE UNIVERSITY OF KERALA DTD. 25/07/06.**

EXT.P11: **COPY OF THE LETTER ISSUED BY THE SANKARACHARYA UNIVERSITY OF SANSKRIT DTD. 07/08/06.**

EXT.P12: **COPY OF THE ORDER ISSUED BY THE GOVERNMENT OFKERALA DTD. 01/03/1993.**

EXT.P13: **COPY OF THE MARK LIST ISSUED BY KERALA UNIVERSITY DTD. 16/01/1993.**

EXT.P14: **COPY OF THE MARK LIST ISSUED BY KERALA UNIVERSITY DTD. 06/02/1995.**

3RD RESPONDENT'S EXHIBITS:

EXT.R3(A): **COPY OF LETTER DTD. 29/10/2003 VIDE NO.45/8/96-DS ISSUED BY THE GOVT. OF INDIA TO THE DEPUTY SECRETARY TO COCHIN PORT TRUST.**

EXT.R3(B): **COPY OF LETTER NO.IDCN/TECH/1/03 DTD. 17/11/2005 ISSUED BY THE INSPECTORATE OF DOCK SAFETY TO THE CHAIRMAN PORT TRUST.**

/TRUE COPY/

KSS

K.BALAKRISHNAN NAIR, J.

W.P.(C) Nos.29445 of 2006 &
6927 of 2007

Dated this the 14th day of June, 2007.

J U D G M E N T

The petitioner, a Welfare Officer in the Cochin Port Trust has approached this Court, challenging Ext.P5 decision of the said authority, by which it was found that he is not qualified to hold the post of Welfare Inspector, under it. He was appointed as Welfare Officer while working as Welfare Inspector. So, if the said finding is allowed to stand, his appointment to the posts of Welfare Inspector and Welfare Officer will be unsettled. The brief facts of the case are the following:-

2. The petitioner joined the Cochin Port Trust as L.D. Clerk, on 3-5-1979. He was promoted as Stenographer in 1981, as U.D. Clerk in 1985 and as Stenographer Grade-I in 1994. The qualifications possessed by him are B.A. Degree in Political Science, Master Degree in Sociology and LL.B. with Labour Law. He was appointed as Welfare Inspector on 27-10-2003. Still later, on 15-6-2004 he was appointed as Welfare

Officer which is a Class I post. Exts.P2 and P1, respectively, are the recruitment rules for appointment to the post of Welfare Inspector and Welfare Officer. Respondents 3 and 4 are rival claimants to the afore-mentioned posts. According to them, the petitioner is not qualified and therefore, they claimed appointment in the place of the writ petitioner. The writ petitions in this regard filed by them have been finally disposed of by Ext.P3 common judgment. The Board of Trustees of the Cochin Port Trust was directed to consider the rival claims of the parties and to decide whether the writ petitioner is qualified to be appointed as Welfare Inspector. There was also a direction in Ext.P3 to advert to the contention of the petitioner relying on Ext.P4 Division Bench judgment. Though, the Board of Trustees deliberated on the matter on more than one occasion, they could not arrive at a decision. Therefore, they referred the matter to Dr.M.V. Paily, for his expert opinion. The decision of the expert was adverse to the petitioner. The Board, which further deliberated on the matter, by majority, decided to accept the expert opinion and issued Ext.P5. It was found that

Post Graduate Degree in Sociology of the petitioner cannot be treated as equivalent to a Degree or Diploma in Social Service. It was also held that LL.B with Labour Law cannot be treated as Degree or Diploma in Social Science. The petitioner attacks Ext.P5, on several grounds. He, firstly, points out that though there was a direction in Ext.P3 judgment to afford him an opportunity of being heard, the Board of Trustees did not hear him before accepting the expert's opinion. The Board of Trustees followed, blindly, the expert's decision. Secondly, it is submitted that the Cochin Port Trust which is the competent authority to take a decision has delegated that function to an expert. So, they delegated their power to take a decision in favour of an external agency. Therefore, the decision is vitiated. Apart from these technical grounds, the petitioner points out that the Degree in Law should be treated as a Degree in Social Science and therefore, he should be treated as qualified. In support of this submission, reliance is placed on Ext.P4 Division Bench decision of this Court. The petitioner further contended that what is prescribed in Ext.P2 is that the candidate should be a graduate with

at least a Diploma in Social Service. So, a person with a Degree or Post Graduate Degree in Social Service is qualified to be considered for appointment. According to him, Degree in Sociology should be treated as a Degree in Social Service. The respondents are accepting MSW which is a Degree in Social Work as equivalent to Degree in Social Service. So, on a proper construction of the qualifications prescribed in Ext.P2 for the post of Welfare Inspector, it is submitted, the same will take in M.A. Sociology also. Therefore, the petitioner prays for quashing Ext.P5 and also all consequential action pursuant to it. The petitioner also points out that since he is having LL.B with Labour Law, he is qualified for the higher post of Welfare Officer. Therefore, according to him, it has to be held that he is qualified for holding the inferior post of Welfare Inspector.

3. The official respondents and party respondents have filed separate counter affidavits, supporting the impugned order. The petitioner has filed reply affidavits dealing with their contentions and reiterating the contentions raised by him in the writ petition. In the reply affidavit filed to the counter affidavit filed

by the second respondent, he has given the details of the course of study of M.A. Sociology.

4. Heard the learned counsel on both sides. The qualification prescribed for the post of Welfare Inspector reads as follows:

> *1) Should be a graduate with at least a Diploma in Social Service or Equivalent as recognised by the State Government.*

The qualifications of the petitioner are already mentioned earlier.

5. The point that arises for decision is whether Ext.P5 is liable to be quashed for one or more grounds urged by the petitioner. It is not in dispute, as directed by this Court in Ext.P3, the petitioner and the contesting respondents were heard by the Board of Trustees. Since the Board felt that the point to be decided is slightly complicated, they thought that they will seek the assistance of an expert. Therefore, it was resolved to refer the matter for the opinion of Dr.M.V.Paily, who is an eminent jurist as also an author in law and related subjects. After receiving his

opinion, the matter was further deliberated by the Board of Trustees and, by majority, it was resolved to accept his opinion. Though, while referring the question to the expert, it was also decided to accept his views, in fact, the views were accepted only after debate and by a majority resolution. So, the contention of the petitioner that the Board of Trustees delegated the decision to an external agency and mechanically accepted its decision cannot be accepted. The non-hearing of the petitioner before accepting the expert opinion will not vitiate the decision, as the decision involved is not a subjective decision, like the choice of penalty in a disciplinary proceedings, but an objective decision, taken based on the materials before the authority. See the views expressed by H.W.R.Wade and C.F.Forsyth in their 'Administrative Law', 8th edition on this point:

> "**Judges are naturally inclined to use their discretion when a plea of breach of natural justice is used as the last refuge of a claimant with a bad case. But that should not be allowed to weaken the basic principle that fair procedure comes first, that is only after hearing both sides that**

> **the merits can be properly considered. A distinction might perhaps be made according to the nature of the decision. In the case of a tribunal which must decide according to law, it may be justifiable to disregard a breach of natural justice where the demerits of the claim are such that it would in any case be hopeless. But in the case of a discretionary administrative decision, such as the dismissal of a teacher or the expulsion of a student, hearing his case will often soften the heart of the authority and alter their decision, even though it is clear from the outset that punitive action would be justified."**

Therefore, the preliminary objections raised by the petitioner, against the decision making process, are repelled.

6. Now, what remains to be decided is whether the qualifications possessed by the petitioner are sufficient for appointing him as Welfare Inspector. No doubt, the petitioner is a graduate. But the question is whether the qualifications possessed by him could be treated as equivalent to Diploma in Social Service. The

petitioner claims that he has the requisite qualifications, based on two grounds. The first ground is that he is having LL.B., with Labour Law and, therefore, it should be treated as a Degree in Social science. The petitioner points out that by Ext.P4 decision, this Court has held that LL.B. Should be treated as a Degree in Social Science, for the purpose of awarding of a scholarship, which is available only for doctoral degree courses in basic agricultural and social sciences. The said decision, rendered in the context of awarding of a scholarship has no application while deciding the qualifications prescribed for appointment to a post. Further, a Degree in a Social Science cannot be treated as equivalent to a Degree in Social Service.

7. The petitioner also pointed out that he is having the prescribed qualifications for the higher post of Welfare Officer, as he is having LL.B. with Labour Law. The fact that a person is qualified for a higher post will not make him eligible for appointment to a lower post. A person qualified for appointment as Lecturer in a college will not be qualified for appointment as High School Assistant. Likewise, the

qualifications of a High School Assistant are not sufficient for appointment as a Primary School Assistant. If the petitioner is having a higher qualification, which pre-supposes the acquisition of a lower prescribed qualification, then he can be treated as qualified. In this case, his subject is sociology; whereas the prescribed subject is social service.

8. Even according to the petitioner, M.A. Sociology programme is having only the papers like (1) Sociological analysis, (2) Sociology of Indian Society, (3) Personality and Social System, and (4) Research Methods and Strategy; whereas the subjects taught for Diploma in Social Service are (1) History, Philosophy and Fields of Social Work, (2) Method of Social Work, (3) Psychology for Social Work, (5) Personal Management, Industrial Relations and Labour Welfare, (6) Dynamics of Family and Child Welfare, (7) Dynamics of Rural Development and (8) Principles and Techniques of Social Welfare Administration. The expert has also noticed that Diploma in Social Service is a distinct discipline, with subjects like Social work, case work, labour welfare, etc., along with field work in industries

and case studies, with a view to prepare the students professionally competent to work in an industry in the field of labour welfare. So, the contention of the petitioner that Post Graduate Degree in Sociology should be treated, as a higher degree in the field of social service cannot be accepted.

9. Though the expert has not referred to Ext.P4, he has expressly stated that LL.B. with Labour Law cannot be equated with Diploma in Social Service. So, the decision cannot be faulted for not mentioning about Ext.P4 judgment.

10. No rule or notification has been placed on record to show that the Kerala Government has recognised M.A. Sociology as equivalent to a Degree or Diploma in Social Service or Social Work.

11. In view of the above position, the petitioner does not have any case on merit. Therefore, even assuming that there is some technical flaw in the decision making process, no purpose will be served by interfering with the decision and remanding the matter for fresh decision.

12. The point that arises for decision in this case is also whether M.A. Sociology is equivalent qualification for promotion as Welfare Inspector in Cochin Port Trust. So, the decision in Writ petition (Civil) No.29445 of 2006 will govern this case also.

In the result, these writ petitions fail and are, accordingly, dismissed.

K. BALAKRISHNAN NAIR,
JUDGE.

Ms/vav.